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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16  
17  
18 IN RE TESLA, INC. SECURITIES  
LITIGATION

Case No. 3:18-cv-04865-EMC

19 **DECLARATION OF NATHANIEL**  
20 **SMITH IN SUPPORT OF PLAINTIFF'S**  
21 **ADMINISTRATIVE MOTION TO FILE**  
22 **UNDER SEAL (ECF NO. 351)**  
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1 **I, Nathaniel Smith, declare as follows:**

2 1. I am a member of the bar of the District of Columbia and serve as Managing Counsel  
3 for Defendant Tesla, Inc. I have been employed with Tesla since April 2021, and in the course of  
4 my employment have become familiar with Tesla's treatment of its proprietary business  
5 information, such as that described in this declaration. I have personal knowledge of the matters  
6 described below and I am competent to testify thereto.

7 2. I make this declaration pursuant to the Northern District of California Civil Local  
8 Rule 79-5(c), in support of Plaintiff's Administrative Motion To Seal ("Motion to Seal").

9 3. On January 11, 2022, Plaintiff Glen Littleton ("Lead Plaintiff"), filed a Partial  
10 Motion for Summary Judgment ("MSJ") (ECF No. 352) and a Motion to Seal (ECF No. 351) certain  
11 confidential exhibits and deposition testimony of Defendants and third parties, used in support of  
12 the MSJ.

13 4. On May 20, 2020, this Court entered a Protective Order (ECF No. 255), to which the  
14 parties had agreed. The Protective Order provides for the protection of "Confidential" information,  
15 described as "information (regardless of how it is generated, stored or maintained) or tangible things  
16 that qualify for protection under Federal Rule of Civil Procedure 26(c) and other proprietary or  
17 private information warranting special protection from public disclosure and from use for purposes  
18 other than prosecuting this litigation." In accordance with the terms of the Protective Order, Tesla  
19 designated certain produced documents and deposition testimony as "Confidential."

20 5. Plaintiff's Motion to Seal concerns such Confidential documents and deposition  
21 testimony that reflect Tesla's sensitive, non-public communications regarding Elon Musk's August  
22 7, 2018 bid to take Tesla private (the "Take Private Bid"), both among Tesla executives and  
23 directors, and with third party investors. It is Tesla's practice to maintain all such non-public  
24 documents and communications strictly confidential, therefore, it is my belief that all of these  
25 individuals had an expectation of the private and confidential nature of their communications.

26 6. Specifically, Exhibits 81-83, 101, and 201 are communications and materials of  
27 Tesla's Board of Directors. These non-public documents reflect the deliberation of Tesla's  
28 directors, legal advice of counsel, and recommendations provided by the Board's financial advisors

1 related to the Take Private Bid. In particular, Exhibit 201 is a detailed presentation created by  
2 Tesla's third party financial advisor, Silver Lake, containing proprietary analysis and methodologies  
3 examining Tesla's business and the electric vehicle market more broadly. Exhibit 201 was  
4 considered and discussed by Tesla's Board of Directors, as reflected in the August 23, 2018 board  
5 minutes of Exhibit 101.

6 7. Exhibits 91, 155, 157, and 301 are internal Tesla communications discussing the  
7 potential logistics of the Take Private Bid and the private third-party investor reactions thereto. For  
8 example, Exhibit 91 provides specific, detailed, and non-public information regarding Tesla's  
9 capitalization table and the identities and holdings of its largest shareholders. Likewise, Exhibit 155  
10 details private, non-public communications regarding various investors' investment in Tesla and  
11 specific logistical hurdles as to whether these investors would be able to own shares in a private  
12 Tesla. The holdings of these third party investors is not publicly known.

13 8. Exhibits 90, 113-120, 146-147, 150-151, and 158 are Tesla private communications  
14 with third parties, including investors regarding their interest in and reactions to the Take Private  
15 Bid, and the structural or legal impediments to participation in the Take Private Bid transaction.

16 9. Exhibits 79, 121, and 165 are text message and call logs of Tesla executives,  
17 including Elon Musk, which include both non-public Tesla business communications between and  
18 among Tesla executives and directors, and private communications with third party investors  
19 regarding reactions to, advice on, planning for, and funding of the Take Private Bid, as well as  
20 personal communications unrelated to this litigation. The personal contact information of numerous  
21 private individuals is contained throughout these exhibits.

22 10. The deposition excerpts of Messrs. Ahuja, Viecha, Teller, Musk, and Ms. Denholm  
23 provide testimony discussing the above-described confidential exhibits, as well as additional  
24 information related to logistics of the Take Private Bid, including potential funding sources therefor  
25 and private meetings thereon.

26 a. In the deposition excerpts of Mr. Ahuja, he testified to details of a meeting with  
27 potential investors in the Take Private Bid, internal Tesla communications and  
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Board communications regarding the Take Private Bid, and Tesla shareholders' private reactions to the Take Private Bid.

- b. In the deposition excerpts of Mr. Viecha, he testified to details of his communications with third party investors in Tesla regarding their private interest in and reactions to the Take Private Bid, including structural and legal impediments to participation in the Take Private Bid transaction.
- c. In the deposition excerpts of Mr. Teller, he testified to the details of a meeting with potential investors in the Take Private Bid.
- d. In the deposition excerpts of Mr. Musk, he testified to the details of a meeting with potential investors in the Take Private Bid, communications with third party investors in Tesla regarding their private interest in and reactions to the Take Private Bid, internal Tesla communications and Board communications regarding the Take Private Bid, and private communications with financial advisors regarding the structure of and funding for the Take Private Bid.
- e. In the deposition excerpts of Ms. Denholm, she testified to details regarding Mr. Musk's Take Private Bid, as communicated to Tesla's Board of Directors.

11. The revelation of Tesla's internal, non-public documents will cause harm to Tesla by revealing financial, planning, personal, and commercial information that could be misconstrued for improper purposes. Such a release of material, in a piecemeal way, risks that the information will be discussed and spread without the proper context and undermine Tesla's ability to receive a fair trial. This risk of misinformation spreading is heightened because Tesla is one of the most followed companies globally and its CEO, Elon Musk, is one of the most followed individuals in the world. In Tesla's view, sealing the materials for a brief period of time—until trial—balances the public's right to access with Tesla's ability to preserve the sensitive and confidential nature of its information.

12. The Motion to Seal also concerns third party documents and deposition testimony. It is my understanding that Plaintiffs did not provide notice to each designating third party that their "Confidential" material was subject to the Motion to Seal.

